
IN THE HON'BLE SUPREME COURT OF ENGLAND AND WALES

TEAM CODE-

IN THE MATTER OF

FAWKES

...APPELLANT

V.

WESTMINSTER INSURANCE COMPANY

...RESPONDENT

WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENT

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LIST OF ABBREVIATIONS

&	And
¶	Paragraph
AIR	All India Reporter
Anr.	Another
Art.	Article
Co.	Company
CompLJ	Company Law Journal
Corpn.	Corporation
Cr.	Criminal
Edn.	Edition
Govt.	Government
Hon'ble	Honourable
i.e.	That is
Ltd.	Limited
No.	Number
Pvt.	Private
QB	Queens' Bench
SC	Supreme Court
SCC	Supreme Court Cases
v.	Versus
Vol.	Volume
www	World Wide Web

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STATEMENT OF JURISDICTION

THE APPELLANT HAS APPROACHED THIS HON'BLE SUPREME COURT OF ENGLAND AND WALES UNDER ARTICLE 40(2)¹ OF THE CONSTITUTIONAL REFORMS ACT, 2005.

¹ **Art. 40 (2) of Constitutional Reforms Act** - An appeal lies to the Court from any order or judgment of the Court of Appeal in England and Wales in civil proceedings.

STATEMENT OF FACTS

For the sake of brevity and convenience of this Hon'ble Court the facts of the present case are summarised as follows:

1. The Appellant, Mr. Fawkes was senior solicitor in a commercial law firm and an aficionado of rare cigars. He had taken out a home insurance policy with the Westminster Insurance, covering loss of or damage to his property, and the contents and personal possessions within. At that time, he had notified the Westminster Insurance of his collection of cigars, valued at Rs. 24000.
2. On 5th of November 2007, Mr. Fawkes was made redundant. Upset, he spent evening drinking alone at home and after consuming a considerable number of glasses of brandy he wondered whether or not if he smoked his cigars he could bring an insurance claim for them being damaged in fires. He reasoned as to that amount would be very useful in his current economic state, and proceeded to light his first cigar.
3. Whilst smoking the first cigar he decided against his plan. He threw his cigar on the floor in disgust, but unfortunately the carpet set alight. The blaze soon spread throughout the room and to other areas of the house. Mr. Fawkes was rescued by the fire- service, cradling his box of cigars, but the property was severely damaged in the fire and was rendered uninhabitable.
4. The fire damaged the property but no one was injured and even the remaining cigars were not damaged. Mr. Fawkes claimed on his home insurance policy for the damage to his house and contents due to the fire. Westminster Insurance refused the claim and subsequently an action was brought against the insurance company by Mr. Fawkes.

STATEMENT OF ISSUES

- I. WHETHER THE COURT OF APPEAL WAS CORRECT IN UPHOLDING THAT MR. FAWKES CANNOT CLAIM INSANITY UNDER THE M'NAGHTEN RULES.**

- II. WHETHER THE COURT OF APPEAL WAS CORRECT IN HOLDING THAT MR. FAWKES WAS UNABLE TO RECOVER UNDER THE POLICY AS HE ACTED WILFULLY.**

SUMMARY OF ARGUMENTS

I. THAT THE COURT OF APPEAL WAS CORRECT IN UPHOLDING THAT MR. FAWKES CANNOT CLAIM INSANITY UNDER THE M'NAGHTEN RULES.

In the case of *Porter v. Zurich* it was held that to claim the defence of insanity it has to be proved on the balance of probabilities that the party qualifies to be insane under M'Naghten rules. It is settled position that for ascertaining the insanity of a person, his state of mind at the time of commission of the act is taken into consideration. In the instant case, it is evident from the facts that the appellant knew the nature and consequences at the time of lighting the cigar as he had the plan to claim insurance for the company. Considerable attention is to be given on this act as it shows the knowledge of the appellant that his act was wrong. It was emphasised that the feeling of guilt shows the knowledge of the act being wrong. Thus, it can be said that the appellant knew the nature and quality of the act and also he knew that the act was wrong.

II. THAT THE COURT OF APPEAL WAS CORRECT IN HOLDING THAT MR. FAWKES WAS UNABLE TO RECOVER UNDER THE POLICY AS HE ACTED WILFULLY.

The burning down of the property was just the natural consequence of the deliberate act of the appellant. This cannot be separated from the previous act of appellant which was intended to defraud the company by claiming the insurance policy and falling of cigar on the carpet and resultantly burning the whole property was natural consequence of the act. It is pertinent to note that, the appellant did not make any claim in respect of the damaged cigar. It shows the malice on the part of appellant, as it is an active concealing of the cause of fire which clearly shows the wilful act of the appellant. Thus, the appellant did a wilful and malicious act and he cannot be allowed to take the claim as it will amount to allow him to take advantage of his own wrong.

ARGUMENTS ADVANCED

I. THE COURT OF APPEALS WAS CORRECT IN UPHOLDING THAT MR. FAWKES CANNOT CLAIM INSANITY UNDER THE M'NAGHTEN RULES.

1. In the case of *Porter v. Zurich*² it was held that where a claimant seeks to recover under a policy of insurance for the consequences of his own act in setting a fire, he needs to prove, on the balance of probabilities, that he was insane, within the meaning of the M'Naghten rules.
2. Lord Nicholls in *Re H (Minors)*³ held that,
"The balance of probability standard means that a court is satisfied an event occurred if the court considers that on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities, the court will have in mind the factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability."
3. In the case of *Queen v. M'Naghten*⁴, Lord Chief Justice Tindal gave the two fold test for ascertaining the liability of a person in a drunken state. It was held that,
"it must be proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong."
4. This principle was reiterated in the case of *Porter v. Zurich Insurance Company*⁵ and it established the applicability of the principle in the insurance cases. In the *M'Naghten*⁶ case it was held that every man is to be presumed as sane unless contrary has been proved sufficiently.

² Case No: 7LV90047.

³ [1996] AC 563.

⁴ 2 Eng. Rep. 718 (H.L. 1843).

⁵ *Supra* Note 2.

⁶ *Supra* Note 4.

5. It is a trite law that for ascertaining the insanity of a person, his state of mind at the time of commission of the act is taken into consideration.⁷ In the instant case, it is evident from the facts that the appellant knew the nature and consequences at the time of lighting the cigar as he had the plan to claim insurance for the company.
6. Certain torts depend upon proof that the defendant acted with the intention and in the knowledge that damage would result to the plaintiff.⁸ Prosser's Handbook of the Law of Torts⁹ says that,

"Intention in tort law is not necessarily a hostile intent, or a desire to do any harm. Rather it is intent to bring about a result which will invade the interests of another in a way that the law will not sanction."

7. This shows that in tortious liability the intent is a less considerable measure while deciding the cases as compared to criminal cases. Wherever someone intentionally cause harm without any lawful justification or excuse of his act, liability follows.¹⁰
8. That, in the instant case Mr. Fawkes (hereinafter referred to as 'Appellant') was in complete knowledge of the act of lighting the cigar to claim the insurance money from the company. In the case of *DPP v. Beard*,¹¹ the knowledge of the act is explained with an illustration. It is mentioned therein that, if the person cuts the throat of a women thinking it as a pig, he will be said as not knowing the nature and quality of the act. Close observation of the facts prove that even after consuming alcohol he was able to contemplate the plan in complete detail, which included the appreciation of the fact that Rs. 24000 of insurance money will be helpful in time of economic crisis he was going through.
9. It was held by Supreme Court that, a person who committed offence with proper calculation, from nowhere it was a result of spur of moment, person liable to be convicted, he cannot be considered as insane.¹² He reasoned this plan and in furtherance he lit the cigar. From the perusal of the above discussed facts in light of

⁷ Patrick v. Royal London Mutual Insurance Society Ltd, [2007] Lloyd's LR 85; see also, DPP v. Beard [1920] AC 479; DPP v. Majewski, [1976] UKHL 2.

⁸ British Motor Trade Association v Salvadori [1949] 1 Ch 556, [1949] 1 All ER 208; B Gangaiab v D P Gangadbaran AIR 1961 Mys 178 at 181, (1961) 2 Cr LJ 247; Bhola Nath Shankar Das v Lachmi Narain AIR 1931 All 83, (1931) ILR 53 All 316, (1931) All LJ 84.

⁹ William L. Prosser, Handbook of the Law of Torts 31 (St. Paul: West Publishing Co., 4th ed. 1971).

¹⁰ Mogul SS Co Ltd v McGregor, Gow & Co (1889) 23 QBD 598 at 613, CA (affd [1892] AC 25, HL); Vishnu Wasudeo Josbi v T L H Smith Parse AIR 1949 Nag 362, (1949) ILR Nag 232.

¹¹ *Supra* Note- 7.

¹² State of M.P. v. Ahmadullah, AIR 1961 SC 998; 1961 (2) Cr LJ 43; (1961) 2 SCJ 197.

the illustration reiterated it is clear that while doing the act he was aware about the nature and quality of the act.

10. Further, after he lit the cigar, he decided against the plan and he threw the cigar on the floor in disgust. Considerable attention is to be given on this fact as it shows the knowledge of the appellant that his act was wrong. In the case of *Porter v. Zurich*¹³, wherein the facts are similar of the instant case it was emphasised that the feeling of guilt shows that the person is in knowledge of the act being wrong. Thus, it can be said that the appellant knew the nature and quality of the act and also he knew that the act was wrong and he cannot be considered as insane within the meaning of M'Naghten Rules.

II. THE COURT OF APPEAL WAS CORRECT IN HOLDING THAT MR. FAWKES WAS UNABLE TO RECOVER UNDER THE POLICY AS HE ACTED WILFULLY.

11. In *Re Young and Harston's Contract*,¹⁴ The Court of Appeal defined 'wilful' as,

"wilful" ...is a word of familiar use in every branch of law, and although in some branches of the law it may have a special meaning, it generally, as used in courts of law, implies nothing blameable, but merely that the person of whose action or default the expression is used, is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing, and is a free agent."

12. Following the definition discussed above, in the instant case the Appellant, at the time of lighting of cigar was in knowledge of the said act and he acted with a motive to claim insurance from the company to help his economic state.
13. Further, the burning down of the property was just the natural consequence of the deliberate act of the Appellant. This cannot be regarded as separate and independent act, which was intended to defraud the company. It happened as he deliberately threw the burning cigar on the carpet resulting in the burning of the property. Considering the fact that he completely knew the nature of his act, throwing of burning cigar shows his intention of defrauding the Respondent.
14. It can be inferred that if the Appellant was in knowledge of his act till the time he lit his cigar and threw it on the carpet, the claim that his act was consequence of

¹³ Case No: 7LV90047.

¹⁴ [1885] Ch Div Vol XXXI Pg. 168.

negligence cannot sustain as the knowledge will not end within a fraction of time. Also, considering that fact of Appellant being an aficionado of a cigar, it can be safely assumed that he was aware of the consequences of the throwing burning cigar on the carpet.

15. *In Arguendo*, even if it is assumed that he was negligent, the act is so grossly negligent that it indicates towards an intention to defraud the company and thus he cannot be allowed to recover the claim. The same has been held in the case of *D' Autremont v. Fire Association of Philadelphia*,¹⁵ where the claim was denied as the act was grossly negligent indicated towards intention to defraud.

A. The act was in contravention of public policy and general principle of insurance.

16. It was held in the case of *Porter v. Zurich*¹⁶ that a claimant who is seeking to recover pursuant to a policy of insurance in respect of a fire which he himself started is faced with the difficulty that his claim is contrary to public policy and/or contrary to general principles of insurance laws. And in this case, the appellant has the additional difficulty that the company expressly excluded all claims based on his wilful and malicious acts.
17. Public Policy: There seem to be two relevant basic maxims which apply throughout the law, firstly, *Ex Turpe Causas Non Oritur Actio* (no action can arise from a wrongful cause) and secondly, a man may not profit from his own wrong.¹⁷ It is a trite law that court cannot assist a person to recover under a policy of insurance in respect of a loss intentionally caused by his own act.¹⁸ This principle is based on legal maxim *Commodum Ex Injuria Sua Nemo Habere Debet* which means that, no one can be allowed to take advantage of his own wrong.¹⁹ A person who does something wrong on his own and subsequently he tries to manipulate the things to take advantage of the act, which law does not allow.
18. In the instant case, Appellant has breached the obligation by burning cigar to recover claim from the policy and subsequent burning of property is caused because of his deliberate act and his gross negligence. Now, he cannot be allowed to take advantage

¹⁵ 65 Hun 475 (1892).

¹⁶ *Supra* Note 2.

¹⁷ *Euro-Diam Ltd v. Bathurst* [1988] 2 All E.R 23.

¹⁸ *Beresford v. Royal Insurance Co.*, [1964] A.C.586.

¹⁹ See, *Gray v. Barr*, [1972] 2 QB 554; see also, *Kusheshwar Prasad Singh v. State of Bihar*; (2007) 11 SCC 447; *Eureka Forbes Ltd v. Allahabad Bank and Ors.* (2010) 3 Comp LJ 342 (SC).

of his own wrong. This principle was reiterated in the case of *Mrutunjay Pani and Anr. v. Narmada Bala Sasmal and Anr.*²⁰

19. General Principles of Insurance Laws- It is a general rule of insurance law that an assured cannot recover the policy monies when he has intentionally brought about the event upon which the policy specifies the monies to be payable.²¹ Lord Atkin in the case of *Beresford v. Royal Insurance Co.*²² summarised that general principle in this way;

“On ordinary principles of insurance law an assured cannot by his own deliberate act cause the event upon which the insurance money is payable. The insurers have not agreed to pay on that happening. The fire assured cannot recover if he intentionally burns down his house, nor the marine assured if he scuttles his ship, nor the life assured if he deliberately ends his own life. This is not the result of public policy, but of the correct construction of the contract.”

20. In the instant case the appellant burned down the property out of his own deliberate act and it did not happen naturally, so in the light of the principles laid down in the above discussed cases insurance company is not liable for the claim.
21. Wilful and Malicious- General Exclusion Clause 1 excluded claims arising out of ‘any wilful or malicious act’ by Appellant or a member of his family. The Respondent seeks to rely on this clause to deny the claim on the grounds that such claim was made to defraud the company in manner that insurance money claimed for his subsequent negligent act done in wilful manner. It is abundantly clear that the act of lighting of cigar was a wilful act as he was acting on his own with the knowledge of the nature and consequence of his act. Further, the act was malicious as it was intended to defraud the insurance company by making claims out of deliberate act.
22. Also, it is pertinent to note that he did not claim insurance against the cigar, on the contrary he concealed it as he was afraid that his claim against the cigars will reveal the actual cause of the claim. Malicious intent is evident from the said act of the Appellant. So, it is submitted that Court of Appeals was correct in upholding that Appellant cannot recover the claim of something done wilfully and maliciously which forms part of the exclusion clause.

²⁰ AIR 1961 SC 1353.

²¹ *Britton v. Royal Insurance Company* (1866) 4 F&F 905.

²² *Supra* Note 7.

B. The proximate cause of the loss was an excepted peril.

23. It is submitted that when a fire which causes a loss is itself caused by a peril expressly excluded by an exception clause in the policy, the insured cannot recover.²³ It is pertinent to note that doctrine of proximate cause is applied for the purpose of determining whether loss is caused by an excepted peril.²⁴ The proximate cause does not, however, mean the last cause, but the effective, dominant or real cause.²⁵ In the case of *Tootal Broadhurst Lee Co v. London and Lancashire Fire Insurance Co*²⁶ it was held that, where a fire is caused by an excepted peril spreads solely by the operation of natural causes, all losses caused by the fire, are proximately caused by the excepted peril.²⁷
24. In the light of discussed principle, the excepted peril was any act done wilfully or maliciously, which is the burning of the cigar with the intention to defraud the company and the fire caused by it spread naturally in the house and resultantly the house property was destroyed and thus no claim can be granted as it will deemed to be caused by an act of excepted peril.
25. It can be said that, the Appellant did a wilful and malicious act and he cannot be allowed to take the claim as it will amount to allow him to take advantage of his own wrong.

²³ Lord Mackay of Clashern, Halsbury's, Law of England, Vol 25, Edn. 4th, 2003, Pg. 320; see also *Re Hooley Hill Rubber and Chemical Co. Ltd and Royal Insurance Co Ltd* [1920] 1 KB 257.

²⁴ *Supra* Note- 16, Pg. 324.

²⁵ *Backer, Gray & Co. v. London Assurance Corp.* [1918] A.C. 101.

²⁶ (1908) Times.

²⁷ *Walker v. London and Provincial Insurance Co.* (1888) 22 LR Ir 572.

PRAYER

Wherefore in the light of facts presented, issues raised, arguments advanced and authorities cited, the Counsels on behalf of the Respondent humbly pray before this Hon'ble Court that it may be pleased to adjudge and declare that:

1. The appeal to be dismissed.
2. The decision of Court of Appeals is upheld.

Or pass any other order that the court may deem fit in the light of equity, justice and good conscience and for this Act of kindness of Your Lordships the Respondent shall as duty bound ever pray.

Sd/- _____

Counsels for the Respondent